

AGENDA

Liquor Rule Review Workshop
Public Advisory Board Meeting

Wednesday, August 14, 2013
9:00 a.m.

Gaming Commission Room
17301 W. Colfax Ave., Suite 135
Golden, Colorado

- I. Introductions
- II. Review of Proposed Changes
- III. Periodic Review of Rules 47-002 through 47-310
- IV. Timeline for next proposed rule draft
- V. Schedule next meeting

PROPOSED LIQUOR RULE CHANGES – 8/14/13

Regulation 47-302 - Changing, Altering, or Modifying Licensed Premises.

- D. This regulation shall not be applicable to the holder of a manufacturer's license as specifically defined in Section 12-47-402, C.R.S., ONLY IF THE PHYSICAL CHANGE, ALTERATION, OR MODIFICATION INVOLVES ANY INCREASE OR DECREASE IN THE TOTAL SIZE OF THE LICENSED PREMISES OR ADDITIONAL SALES ROOM LOCATION.

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Regulation 47-310. Application - General Provisions.

G. WHEN CONSIDERING WHETHER THE APPLICANT FOR A SPECIAL EVENT PERMIT IS OF GOOD MORAL CHARACTER, THE STATE OR LOCAL LICENSING AUTHORITY SHALL DETERMINE, AT A MINIMUM, WHETHER THE APPLICANT FAILED TO CONDUCT PAST SPECIAL EVENTS IN COMPLIANCE WITH APPLICABLE LAWS. OFFICERS OF THE ORGANIZATION OR OF A POLITICAL CANDIDATE MAKING APPLICATION SHALL NOT BE REQUIRED TO SUBMIT INDIVIDUAL HISTORY APPLICATIONS AND FINGERPRINT CARDS UNLESS THE STATE OR LOCAL LICENSING AUTHORITY DETERMINES THAT SUCH INFORMATION IS NECESSARY TO ESTABLISH THE GOOD MORAL CHARACTER OF THE APPLICANT.

Regulation 47-312. Change of Location.

- B. Applications to change location shall be made upon forms prepared by the state licensing authority and shall be complete in every detail. Each such application shall state the reason for such change, and in case of a retail license, shall be supported by evidence that the proposed change will not conflict with the desires of the adult inhabitants and the reasonable requirements of the neighborhood in the vicinity of the new location. An application to change the location of a retail license shall contain a report of the local licensing authority of the town, city, county, or city and county in which the license is to be exercised. Such report shall describe the findings of the local licensing authority concerning the reasonable requirements of the neighborhood and the desires of the adult inhabitants with respect to the new location, except that in the change of location for a club license, the needs of the neighborhood need not be considered. WHEN A LICENSEE IS REQUIRED BY LEASE RENEWAL, CONDEMNATION, OR RECONSTRUCTION TO MOVE ITS LICENSED PREMISES TO A NEW ADDRESS THAT IS LOCATED WITHIN THE SAME SHOPPING CENTER, CAMPUS, FAIRGROUND, OR SIMILAR RETAIL CENTER, THE LOCAL OR STATE LICENSING AUTHORITY MAY, AT ITS DISCRETION, WAIVE THE NEIGHBORHOOD NEEDS AND DESIRES ASSESSMENT REQUIREMENTS SHOULD IT DETERMINE THAT THE NEW LOCATION REMAINS WITHIN THE SAME NEIGHBORHOOD AS THE OLD LOCATION.

PROPOSED LIQUOR RULE CHANGES – 8/14/13

Regulation 47-316. Advertising Practices.

OPTION 1

A. Consumer Advertising Specialties

1. “Consumer advertising specialties” shall mean those items designed to advertise or promote a specific alcohol beverage brand or supplier, that have a utilitarian function to the consumer in addition to product promotion and that are intended and designed to be carried away by the consumer. Consumer advertising specialties shall include: t-shirts, caps, visors, bottle or can openers, cork screws, printed recipes, pencils, pens, pins, buttons, matches, computer flash and jump drives (not to exceed 8 GB), computer mouse pads, shopping bags, key chains, paper or plastic cups OR PLATES, and similar items of negligible value, as approved by the Liquor Enforcement Division. For purposes of this regulation, glassware and plates do not qualify as consumer advertising specialties.

OPTION 2

A. Consumer Advertising Specialties

1. “Consumer advertising specialties” shall mean those items designed to advertise or promote a specific alcohol beverage brand or supplier, that have a utilitarian function to the consumer in addition to product promotion and that are intended and designed to be carried away by the consumer. Consumer advertising specialties shall MAY include, BUT ARE NOT LIMITED TO: t-shirts, caps, visors, bottle or can openers, cork screws, printed recipes, pencils, pens, pins, buttons, matches, computer flash and jump drives (not to exceed 8 GB), computer mouse pads, shopping bags, key chains, paper or plastic cups OR PLATES, and similar items of negligible value, as approved by the Liquor Enforcement Division. ~~For purposes of this regulation, glassware and plates do not qualify as consumer advertising specialties.~~
2. Suppliers may provide consumer advertising specialties free of charge to a licensed retailer, so long as they contain an advertising message that promotes the supplier or their products, ~~and do not contain any information, markings, or logos that are specific to a retailer.~~ SUCH CONSUMER ADVERTISING SPECIALTIES MAY CONTAIN INFORMATION, MARKINGS, OR LOGOS SPECIFIC TO A LICENSE RETAILER.
3. ~~Consumer advertising specialties that contain any information, markings, or logos specific to a licensed retailer may not be provided free of charge, but must be purchased by a retailer at a minimum of the supplier’s cost.~~
43. Suppliers must have available for inspection those customary business records that verify these transactions, in accordance with 12-47-701, C.R.S., and for the time frame specified in Regulation 47-700.

Regulation 47-316. Advertising Practices.

B. Point-of-Sale Advertising

4. Supplier Rebates for Consumers and Supplier Coupons

Supplier rebates and coupons, as contemplated in this regulation, are a permitted method of alcohol beverage product promotion if they are intended to reach the consumer through permitted advertising practices, and to provide the consumer with a direct financial benefit through the redemption process. Rebates and coupons may not be used as a means of financial assistance to licensed retailers or as a means to influence or control a retailer's product selection.

- a. A supplier's "consumer rebate" provides a consumer with cash back after the consumer has purchased a supplier's product and has provided proof of product purchase upon redemption.
 - i. A supplier may provide consumer rebate certificates to consumers through point-of-sale advertising (SUCH AS TEAR PADS, SHELF TALKERS, CASE CARDS, OR OTHER POINT-OF-SALES MATERIALS), package inserts, or other printed or electronic media.
 - ii. A supplier's consumer rebate certificate may not be redeemed through a licensed retailer.

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Regulation 47-318. Owner-Manager.

- A. Each license under the Colorado Liquor or Beer Codes must be held by the owner of the establishment, which is licensed. “Owner” means the person or persons whose proprietary interest is such that they bear risk of loss other than as an insurer, and have opportunity to gain profit from operation or sale of the establishment.

In determining who is the “owner”, elements considered beside risk of loss and opportunity for profit will include: Possession, who controls the licensee, who guarantees its debts, who is beneficiary under its insurance policies, and who acknowledges liability for federal, state or local taxes.

B. NO LANDLORD OR OTHER LESSOR OF REAL PROPERTY ENTERING INTO AN AGREEMENT WITH A LICENSEE TO PROVIDE A PHYSICAL SPACE SHALL BE CONSIDERED AN “OWNER” OR TO HAVE FINANCIAL INTEREST IN A LICENSE PROVIDED:

1. THE LANDLORD OR LESSOR IS NOT ANOTHER LIQUOR LICENSEE THAT IS PROHIBITED FROM HAVING A FINANCIAL INTEREST IN THE LICENSEE’S CLASS OF LICENSE;
2. THE LANDLORD OR LESSOR HAS NO PARTNERSHIP INTEREST OR OTHER OWNERSHIP AGREEMENT WITH THE LICENSEE OUTSIDE OF THE REAL ESTATE AGREEMENT;
3. THE LANDLORD OR LESSOR HAS NO RISK OF ANY FINANCIAL LOSS BY THE LICENSEE AND NO LIABILITY FOR DEBT INCURRED BY THE LICENSEE; AND
4. LEASE PAYMENTS ARE NOT BASED IN WHOLE OR IN PART UPON A TOTAL OF 10 PERCENT (10%) OR MORE OF THE LICENSEE’S TOTAL GROSS ANNUAL SALES. THE NAMES OF LANDLORDS OR LESSOR WHO RECEIVE ANY PERCENTAGE OF THE LICENSEE’S TOTAL GROSS ANNUAL SALES MUST BE DISCLOSED TO LOCAL AND STATE LICENSING AUTHORITIES. LANDLORDS OR LESSORS THAT RECEIVE 10 PERCENT (10%) OR MORE OF THE LICENSEE’S TOTAL GROSS ANNUAL SALES ARE SUBJECT TO BACKGROUND CHECKS BY LOCAL AND STATE LICENSING AUTHORITIES.

- BC. Owners may hire managers, and managers may be compensated on the basis of profits made, gross or net. A license may not be held in the name of the manager.

1. MANAGERS MAY BE INDIVIDUALS OR BUSINESS ENTITIES, PROVIDED THEY DO NOT HAVE ANY PARTNERSHIP OR FINANCIAL INTEREST IN THE LICENSEE’S BUSINESS EXCEPT AS PROVIDED IN THIS PARAGRAPH.
2. THE STATE OR LOCAL LICENSING AUTHORITY MAY REQUEST AT ANY TIME TO REVIEW THE MANAGEMENT AGREEMENT BETWEEN A LICENSE OWNER AND THE INDIVIDUAL OR ENTITY ACTING AS A MANAGER.
3. IF THE MANAGER HAS A FINANCIAL INTEREST IN ANOTHER LIQUOR LICENSE THAT IS PROHIBITED FROM HAVING A FINANCIAL INTEREST IN THE EMPLOYER’S CLASS OF LICENSE, THE MANAGER CANNOT BE COMPENSATED BASED UPON A PERCENTAGE OF PROFITS, BUT MAY BE COMPENSATED ON A FLAT FEE BASIS FOR REACHING SALES GOALS.

- ED. A spouse of a licensee may hold a license in their own right if they are the owner of the licensed establishment, regardless of whether they file separate or joint income tax returns.

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DE. A partnership interest, limited or general, a joint venture interest, or ownership of a share or shares in a corporation which is licensed, constitutes ownership.

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Regulation 47-320. Signs and Interior Displays.

OPTION 1

B. A SUPPLIER MAY PROVIDE AT A DISCOUNT OF UP TO 50% OF THE VALUE OF CLOCKS, MIRRORS, POOL TABLE LAMPS, PATIO TABLE UMBRELLAS OR OTHER ITEMS THAT HAVE BOTH A UTILITARIAN VALUE TO THE RETAILER AND AN ADVERTISING VALUE TO THE SUPPLIER, AND WHICH PROMINENTLY DISPLAY THE SUPPLIER'S NAME, BRAND NAME, TRADE MARK OR LOGO. THE TOTAL VALUE OF ALL DISCOUNTS MAY NOT EXCEED \$200 AT ANY ONE TIME IN ANY ONE RETAIL ESTABLISHMENT. THE VALUE OF SUCH ITEMS IS THE ACTUAL COST TO THE SUPPLIER THAT INITIALLY PURCHASED THE ITEMS, EXCLUDING TRANSPORTATION AND INSTALLATION COSTS.

OPTION 2

B.

1. A supplier's signs, illuminated or otherwise, that HAVE NO OTHER UTILITARIAN VALUE, may be provided free of charge to a licensed retailer, ~~shall~~ THESE SIGNS MAY be composed of any standard, pre-manufactured material such as paper, plastic, glass (including mirrored glass), cloth, metal, or programmable electronic components, ~~and shall have no other utilitarian value.~~
2. CLOCKS, MIRRORS, POOL TABLE LAMPS, AND PATIO TABLE UMBRELLAS THAT PROMINENTLY DISPLAY THE SUPPLIER'S NAME, BRAND NAME, TRADE MARK OR LOGO MAY BE PROVIDED TO A LICENSED RETAILER AS LONG AS THE PROVIDING OF THAT SIGN IS NOT CONDITIONED BY THE SUPPLIER UPON THE REMOVAL OR EXCLUSION OF A COMPETING SUPPLIER'S ALCOHOL BEVERAGE PRODUCTS OR BY THE RETAILER AS A CONDITION FOR THE PURCHASE OF THE SUPPLIER'S PRODUCTS.

Regulation 47-322. Unfair Trade Practices and Competition.

E. Alcohol Beverage Samples for Retailers

1. Wholesalers, or those licensed to sell at wholesale pursuant to article 46 and 47 of title 12, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for on-premises under the following conditions:
 - a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.
 - b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.
 - c. The retailer has not purchased the product SKU of the alcohol beverage offered as a sample within the previous ~~twelve (12) months~~ SIX (6) MONTHS.
 - d. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six-pack, OR 72-OUNCE EQUIVALENT, per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.
 - e. Only the retailer and its employees are authorized to taste or test those alcohol beverages given as samples, as provided herein. Nothing shall authorize a retailer to sell any samples provided or to use such the same for consumer tastings.

Regulation 47-418. Restaurants.

D. Restaurants must be maintained in a clean and sanitary condition and in full compliance with the requirements OF 6 C.C.R. 1010-2 for food service establishments under the supervision of the State Board of Health, and shall maintain such food service license issued by the Board of Health in full force and effect at all times while selling alcohol beverages for consumption therein.

E. ESTABLISHMENTS OPERATING AS A “TEMPORARY RETAIL ESTABLISHMENT,” “MOBILE RETAIL ESTABLISHMENT,” OR “PUSHCART” AS DEFINED IN REGULATION 1-202, 6 C.C.R. 1010-2, SHALL BE CONSIDERED TO NOT HAVE THE NECESSARY EQUIPMENT OR PREMISES TO QUALIFY FOR A HOTEL AND RESTAURANT LICENSE.

Regulation 47-900. Conduct of Establishment.**A. Orderliness, loitering, serving of intoxicated persons.**

Each person licensed under Article 46, Article 47, and Article 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

B. PHYSICAL CONTROL OF ALCOHOL BEVERAGES

ALCOHOL BEVERAGES THAT ARE STORED WITHIN THE LICENSED PREMISES OF ON-PREMISES LICENSED RETAILERS SHALL BE STORED AND MAINTAINED IN AREAS THAT ARE NOT ROUTINELY ACCESSIBLE TO CUSTOMERS OR PATRONS.

BC. Attire and conduct of employees and patrons.

No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles shall engage in or permit the following:

1. Employment or use of any person in the sale or service of alcohol beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
2. Employment or use of the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph number (1) above.
3. Any person on the licensed premises touching, caressing or fondling the breasts, buttocks, anus, or genitals of any other person.
4. Any employee or person on the licensed premises wearing or using any device or covering of any kind, which exposes or simulates the breasts, genitals, anus, pubic hair or any other portion thereof.

CD. Entertainment.

Live entertainment is permitted on any licensed premises, except that:

1. No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles shall engage in or permit any person to perform acts of or acts which simulate:

- a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. The touching, caressing or fondling of the breasts, buttocks, anus or genitals.
 - c. The displaying of pubic hair, anus, vulva or genitals.
2. No licensee nor any employee or agent of such licensee shall engage in or permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.
 3. No licensee nor any employee or agent of such licensee shall engage in or permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.
 4. No licensee nor any employee or agent of such licensee shall wear or use any device or covering of any kind that exposes or simulates the breasts, genitals, anus, pubic hair or other portion thereof.

DE. Visual displays.

No person licensed under Article 46, Article 47, and Article 48 of Title 12, nor any employee or agent of such person licensed under these Articles, shall engage in or permit on the licensed premises the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

1. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
2. Any person being touched, caressed or fondled on the breasts, buttocks, anus or genitals.
3. Scenes wherein a person displays the vulva or the anus or the genitals.
4. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

FG. Local ordinances.

This regulation shall not be deemed to authorize or permit any conduct, behavior or attire on licensed premises which is otherwise prohibited by any city or county ordinances.

Regulation 47-918. Removal of Alcohol Beverages from Premises.

- A. Other than those licensees described in Section 12-47-421(2)(A), who may permit a patron to reseal a partially consumed bottle of vinous liquor (not to exceed 750 ml) which was originally sold for on premises consumption; no licensee, manager or agent of any establishment licensed for on-premises consumption shall KNOWINGLY OR RECKLESSLY permit the removal from the licensed premises of any alcohol beverages in sealed or unsealed containers.

1. LICENSEES THAT POST SIGNS AS SPECIFIED IN SECTION 12-47-901(9)(A)(II)(A), C.R.S., MUST POST THE SIGNS AT ALL EXITS IN A LOCATION THAT CAN BE EASILY IDENTIFIED AND READ BY PATRONS USING THOSE EXITS.

2. REGARDLESS OF WHETHER A LICENSEE POSTS A SIGN AS SPECIFIED IN SECTION 12-47-901(9)(A)(II)(A), C.R.S., THE LICENSEE MAY BE CHARGED WITH KNOWINGLY PERMITTING THE REMOVAL OF AN ALCOHOL BEVERAGE FROM THE LICENSED PREMISES IF THE LICENSEE SHOWS RECKLESS DISREGARD FOR THE PROHIBITION AGAINST ALCOHOL BEVERAGE REMOVAL FROM THE LICENSED PREMISES, WHICH MAY INCLUDE PERMITTING THE REMOVAL OF AN ALCOHOL BEVERAGE FROM THE LICENSED PREMISES THREE TIMES WITHIN A TWELVE-MONTH PERIOD, REGARDLESS OF WHETHER THE THREE INCIDENTS OCCUR ON THE SAME DAY OR SEPARATE DAYS. A LICENSEE MAY BE CHARGED WITH KNOWINGLY PERMITTING THE REMOVAL OF AN ALCOHOL BEVERAGE FROM THE LICENSED PREMISES UPON THE THIRD OCCURRENCE OF ALCOHOL BEVERAGE REMOVAL FROM THE LICENSED PREMISES.

- B. Licensees described in paragraph A of this regulation who permit a patron to remove a partially consumed bottle of vinous liquor shall reseal the bottle with a cork or other commercially manufactured stopper
- C. Patrons transporting a partially consumed bottle of vinous liquor in a motor vehicle shall comply with the requirements of 42-4-1305, C.R.S.

Regulation 47-002. Fermented Malt Beverages - Advertising Practices.

No licensee for the retail sale or distribution of fermented malt beverages shall, upon or in proximity to, or referring to the licensed premises, use, publish or exhibit, or permit to be used, published or exhibited, any sign, advertisement, display, notice, symbol or other device which advertises, indicates, implies or infers that beverages containing more than 3.2% alcohol by weight (wt) or four percent by volume (vl), are sold, distributed or dispensed upon or from said premises.

Regulation 47-004. Fermented Malt Beverages - Possession of Alcohol Liquors.

No person shall possess or consume on the licensed premises of a fermented malt beverage licensee, any beverages containing alcohol in excess of three and two-tenths percent by weight or four-percent alcohol by volume.

Regulation 47-006. Fermented Malt Beverages - Identification and Labeling.

- A. No licensee for the sale of fermented malt beverages shall sell, offer, expose for sale, or distribute within this state any canned or bottled fermented malt beverages in case or carton lots unless such beverages be contained in a case or carton bearing the phrase "3.2%" followed by a word indicating the type of beverage, such as beer or ale. The designation "3.2% BEER," "3.2% ALE," etc., as the case may be, shall be composed of legible symbols of not less than ¼ of one inch in height, and shall be indelibly stamped or imprinted on top of the case or carton or upon the sealing strip thereof. Notwithstanding the above, cartons or unsealed returnable cases need no external markings if such container allows direct view of the individual cans or bottles which indicates the percent and type of beverage therein.
- B. No licensee shall sell, offer or expose for sale or distribute within this state any fermented malt beverages in kegs, casks or other containers except bottles and cans of less than 33 ounces capacity unless such containers bear thereon the phrase "3.2%" followed by a word indicating the type of beverage, such as beer or ale. The designation "3.2% BEER", "3.2% ALE," etc., as the case may be, shall be composed of legible symbols of not less than one inch in height, shall clearly and visibly appear on the container which is intended to be opened and shall be indelibly stamped or imprinted either upon the container itself or upon a label affixed thereto and sealed with a transparent water repellent material. Nothing shall prohibit the division from approving materials other than water repellent material used for labeling if the division finds the material is suitable for maintaining the required information on the container.
- C. No such licensee shall sell, offer or expose for sale or distribute within the state any fermented malt beverages in bottles or cans of less than thirty-three (33) ounces capacity unless said containers, or a label attached thereto, shall carry thereon, in clear legible and indelible print a statement which clearly indicates that the beverage therein contains not more than 3.2% alcohol by weight or 4% alcohol by volume.

Regulation 47-008. Fermented Malt Beverages - Limitations of License.

- A. No person licensed for on-premises consumption only, pursuant to section 12-46-107(1)(b), C.R.S., shall sell fermented malt beverages in sealed containers, or permit the removal from the licensed premises of any fermented malt beverages in either sealed or unsealed containers.

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- B. No person licensed for off-premises consumption only, pursuant to section 12-46-107(1)(a), C.R.S., shall sell, by the drink, any open container of fermented malt beverage, or permit the consumption of any fermented malt beverages within the licensed premises.

Regulation 47-100. Definitions.

- A. “Licensed, Licensee, and Licensed Premises” mean persons or premises issued a license or permit under Articles 46, Articles 47 and Article 48 of Title 12.
- B. “Manufacturer” means a Colorado licensed brewery, winery, limited winery, distillery, vintner’s restaurant or brewpub as defined by C.R.S. 12-46-104 and 12-47-103.
- C. “Nonresident Manufacturer” means a manufacturer of malt liquor or fermented malt beverages that is located outside the state of Colorado and has been issued a Brewer’s Notice by the Bureau of Alcohol, Tobacco and Firearms.
- D. “Product Sales Promotion” means a sales promotion, featuring a particular brand of alcohol beverage, that is conducted on a retailer’s licensed premises by an alcohol beverage supplier. Product sales promotions may include drink specials, product sampling and the giveaway of consumer goods.
- E. “Sponsored Event” means an event supported in whole or in part by a licensed supplier that is conducted at a retail licensed establishment.
- F. “Supplier” means a Colorado licensed manufacturer, brewpub, vintners restaurant, limited winery, non-resident manufacturer, wholesaler or importer of alcohol beverages.
- G. “Unreasonable or Undue Noise” means a level of noise that violates local noise ordinance standards, or where no local noise ordinance standard exists, a level of noise that would violate the provisions of 25-12-103 C.R.S.

Regulation 47-200. Declaratory Orders Concerning the Colorado Liquor, Beer or Special Event Codes.

- A. Any person may petition the Liquor Enforcement Division of the Colorado Department of Revenue for a statement of position concerning the applicability to the petitioner of any provision of the Colorado Liquor, Beer, or Special Events Codes, or any regulation of the state licensing authority. The Division shall respond with a written statement of position within thirty days of receiving such petition.
- B. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position or who has not received a response within thirty days, may petition the state licensing authority for a declaratory order pursuant to C.R.S. 1973, 24-4-105(11). If a petitioner is dissatisfied with a statement of position, a petition for declaratory order must be filed within thirty days after issuance of the statement of position. Any petitioner who has not received a statement of position within thirty days may petition the state liquor licensing authority at any time thereafter. Such petition shall set forth the following:

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1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the Colorado Liquor, Beer, or Special Events Codes and if so, the type of license/permit and address of the licensed premises.
 2. The statute, rule or order to which the petition relates.
 3. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.
 4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.
 5. A concise statement of the declaratory order sought by the petitioner.
- C. The state licensing authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the state licensing authority decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:
1. The petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the state licensing authority more than thirty days after issuance of the statement of position.
 2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.
 3. The petition involves a subject, question or issue which is currently involved in a pending hearing before the state or any local licensing authority, or which is involved in an on-going investigation conducted by the Division or which is involved in a written complaint previously filed with the state liquor licensing authority.
 4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.
 5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R.Civ. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.
- D. If the state licensing authority determines that it will entertain the petition for declaratory order, it shall promptly so notify the petitioner, and the following procedures shall apply:
1. The state licensing authority may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Liquor Enforcement Division to submit additional evidence and legal argument in writing.

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2. In the event the state licensing authority determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, a hearing shall be conducted in conformance with C.R.S., 1973, 24-4-105.
 3. In ruling on a petition, the state licensing authority may take administrative notice of general, technical or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
 4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.
 5. The parties to any proceeding pursuant to this rule shall be the petitioner and the Liquor Enforcement Division. Any other interested person may seek leave of the state liquor licensing authority to intervene in the proceeding and such leave may be granted if the licensing authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
 6. The declaratory order shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 24-4-106.
- E. A copy of any petition for a statement of position to the Liquor Enforcement Division and of any petition for a declaratory order to the state licensing authority shall be mailed, on the same day that the petition is filed with the Division or authority, to the individual county or municipality within which the petitioner's licensed premises, or premises proposed to be licensed, are located. Any petition filed with the Division or authority shall contain a certification that the mailing requirements of this paragraph have been met.
- F. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Liquor Enforcement Division for a period of 10 years, unless the statement of position or declaratory order is superseded by a statutory or regulatory change, or amended or reversed by the State Licensing Authority. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

Regulation 47-300. Change in Class of License.

- A. A request for a change in the class of license from that presently held by a licensee shall be considered an application for a new license and subject to the requirements of sections 12-47-311, C.R.S and 12-47-313. C.R.S.
- B. A liquor-licensed drugstore licensee that was licensed on or before July 1, 2000, may convert its license to a retail liquor store license upon the filing of a new application and payment of all applicable state and local application and license fees, but the local authority shall not consider the distance restrictions described in section 12-47-313(1)(d)(i), C.R.S. Further, the local authority may, but shall not be required to, consider the reasonable requirements of the neighborhood when considering the new application.
- C. A new application to change the class of license shall not prohibit a licensee from operating under the terms and conditions of the old license, while its application for change in class is pending. Upon issuance of the new license, the licensee may continue the sale of the

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alcohol beverage inventory that was purchased under the old license, as long as the new license authorizes the sale of the same type of alcohol beverages. However, nothing herein shall authorize a licensee to sell a type of alcohol beverage unless specifically authorized to do so by the license it holds.

Regulation 47-301. Undue Concentration of Licenses.

- A. For purposes of determining if the issuance of a new tavern or retail liquor store license would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources, the state or local licensing authority may consider factors, including, but not limited to:
 - 1. Whether the ratio of the number of tavern or retail liquor store licenses within the county/s of the neighborhood to be served where application has been made to the county/s population exceeds the ratio of the statewide number of licenses of the same class to the state population;
 - 2. Whether the ratio of the number of tavern or retail liquor store licenses within the census tract or census division in the neighborhood in which the applicant premises are located to the population of the census tract or division exceeds the ratio of number of licenses of the same class in the county or municipality to the population of the county or municipality where application has been made;
 - 3. The distance between the applicant premises and the premises of other holders of the same class of license;
 - 4. Published data concerning the concentration of tavern or retail liquor store licenses and its effect on the need for law enforcement resources; and
 - 5. Testimony concerning the use of law enforcement resources by law enforcement officials with the responsibility for enforcing state or local law in the area in which the applicant premises are located.
- B. For purposes of this regulation:
 - 1. The number of tavern and retail liquor store licenses within a given area shall be as published by the state licensing authority;
 - 2. The population shall be the estimate published by the most recent United states decennial or special census (for state, census tract, and census division data) or the most recent estimates published by the Department of Local Affairs (for county and municipal data).
 - 3. "Neighborhood" shall be that area as required pursuant to 12-47-312(2)(a) C.R.S.

Regulation 47-302 - Changing, Altering, or Modifying Licensed Premises.

- A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted

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at the time of obtaining the original license without application to, and the approval of, the local and state licensing authorities.

For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.
2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.
3. Any substantial or material enlargement of a bar, or relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.
4. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the latest prior application. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and any non structural remodeling of a fermented malt beverage licensee's premises where the remodel does not expand the existing area designed for the display or sale of fermented malt beverage products.
5. The destruction or demolition, and subsequent reconstruction, of a building that contained licensed premises shall require the filing of new building plans with the local licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license.
6. Nothing herein shall prohibit a licensee, who is otherwise not eligible for an optional premises permit or optional premises license, from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:
 - a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages.
 - b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic.
 - c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare.

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- d. Any other conditions as established by the local licensing authority.
- B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:
 - 1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.
 - 2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.
 - 3. Compliance with the applicable zoning laws of the municipality, city and county or county.
 - 4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.
 - 5. The legislative declaration that the Colorado Liquor and Beer Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.
- C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen days after the date of notice.
- D. This regulation shall not be applicable to the holder of a manufacturer's license as specifically defined in Section 12-47-402, C.R.S.

Regulation 47-303. License Renewal.

- A. Only the license holder may exercise the privilege of license renewal. No one other than the license holder, or their duly-authorized representative, may file an application to renew the license with local and state licensing authorities.
- B. A complete renewal application shall include evidence that the licensee remains in possession of the licensed premises, by ownership, lease, rental, or other arrangement at the time of application. Lease agreements that include a provision that a lease period may lapse within the new license year do not automatically disqualify the licensee from renewing, nor automatically invalidate the license. However, this provision does not preclude a licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.
- C. Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five (45) days prior to the date of expiration and to the state licensing authority not less than thirty (30) days prior to the date of expiration. The state or local licensing authority may waive these requirements for good cause. Once an application for renewal has been filed with the local licensing authority, the licensee may continue to

operate up and until final agency action, if final action by both authorities has not been completed before the date of license expiration.

- D. No application for renewal of a license shall be accepted by the local licensing authority after the date of expiration; except that, a licensee whose license has not been expired for more than ninety (90) days may file a late renewal application upon the payment of a non-refundable late application fee to the local licensing authority. A licensee who files a late renewal application and pays the requisite fees may resume operation until both state and local licensing authorities have taken final action to approve or deny such licensee's late renewal application.
- E. Nothing herein authorizes a licensee to purchase, sell, or serve alcohol beverages with an expired license after expiration, except as otherwise authorized in this regulation. Licensed privileges are not restored until the renewal application and requisite fees have been duly filed with the local licensing authority, in the case of a retail license, and with the state licensing authority for all others.
- F. Any licensee whose license has been expired for more than ninety (90) days must apply for a new license pursuant to section 12-47-311, C.R.S. and shall not purchase or sell any alcohol beverage until all required licenses have been obtained, unless otherwise authorized under these regulations.

Regulation 47-304. Transfer of Ownership and Changes in Licensed Entities.

A. Corporations and Limited Liability Companies

- 1. If the applicant for any license under Articles 46 or Article 47 of Title 12 is a corporation or limited liability company, it shall submit with the application, the names, addresses, and individual history records of all of its principal officers, directors, or managers, and a copy of its articles of incorporation or articles of organization; and if a foreign entity, evidence of its qualification to do business within this state. In addition, each applicant shall submit the names, addresses, and individual history records of all persons owning 10% or more of the outstanding or issued capital stock, or persons holding a 10% or more membership interest.
- 2. Any transfer of capital stock or any change in principal officers or directors of any corporation holding a license under the provisions of the Colorado Liquor or Beer Code and which is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended, shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit the names, addresses, and individual history records for any new officer, director, or stockholder acquiring 10% or more outstanding capital stock, as well as the corporate minutes verifying the transactions. Licensees that are subject to the Securities and Exchange Act of 1934, as amended, shall be required to do the same, except that they shall not be required to report any single transfer of outstanding capital stock of less than 10%.
- 3. Any transfer of membership interest or any change in managers of any limited liability company holding a license shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit

the names, addresses, and individual history records for any new manager, or member acquiring 10% or more membership interest.

B. Partnerships

1. If the applicant for any license under articles 46 or 47 of title 12 is a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership it shall submit with the application, the names, addresses, and individual history records of all of its general or managing partners, and a copy of its partnership agreement; and, if a foreign entity, evidence of its qualification to do business within this state. In addition, each applicant shall submit the names, addresses, and individual history records of any other partner holding a 10% or more partnership interest.
2. Any transfer of partnership interest or any change in general or managing partners of any partnership holding a license shall be reported to the respective licensing authorities within thirty (30) days after such transfer or change. With the report, the licensee shall submit the names, addresses, and individual history records for any new general or managing partner, or any other partner acquiring 10% or more partnership interest.

C. Entity Conversions

1. Any licensee that qualifies for an entity conversion pursuant to section 7-90-201, C.R.S., et. seq., or similar law enacted by other states, shall not be required to file a transfer of ownership application pursuant to section 12-47-303, C.R.S. upon statutory conversion, but shall submit a report containing suitable evidence of conversion within thirty (30) days of such conversion. Such evidence shall include, but not be limited to, recognition of conversion by the Colorado Secretary of State. In addition, within thirty (30) days of the conversion, the licensee shall submit the names, addresses, and individual history records of any new officers, directors, managers, general or managing partners, and all persons having an ownership interest of 10% or more.

D. All reports required by this regulation shall be made on forms supplied by the Department of Revenue, Liquor Enforcement Division.

E. For all applicants for the issuance of a license by reason of a transfer of possession of the licensed premises by operation of law (bankruptcy, receivership, foreclosure, eviction, etc.) the licensing authorities shall consider only the requirements of C.R.S. 12-47-307. The loss of possession of the licensed premises by the licensee does not in itself automatically invalidate, cancel or terminate the underlying license. An applicant who otherwise comes into possession of the licensed premises by operation of law, may apply for a transfer of the underlying license as provided by law pursuant to C.R.S. 12-47-303. However, this provision does not prohibit a licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.

F. No application for a transfer of ownership may be received or acted upon by either the state or local licensing authority if the previous licensee has surrendered its license and had it canceled by either authority prior to submission of the transfer application. In cases where cancellation has occurred prior to the submission of a transfer of ownership application, the license applicant shall follow the procedures for a new license application pursuant to 12-47-311 C.R.S.

Regulation 47-306. Change of Trade Name.

No licensee shall change the name or trade name of the licensed premises without submitting written notice to the local and state licensing authorities, not less than ten days prior to the change of name.

Regulation 47-307. Master Files.

- A. Any person or entity seeking the issuance of a state master file pursuant to section 12-47-304(1)(b), C.R.S. shall have an interest in a minimum of five (5) state licenses issued, or five (5) license applications filed within a year of the master file application, pursuant to articles 46 and/or 47 of title 12, C.R.S.
- B. An applicant for master file can meet the minimum requirements of this regulation by having an interest in separate licensed entities, as long as there are a minimum of five (5) total licenses issued and/or applications pending.
- C. To maintain a state master file, once approved and established, the licensee shall comply with section 12-47-301(7), C.R.S. and Regulation 47-304 as it relates to the timely disclosure of any change in structure. Repeated failure to comply with timely advisement to the state licensing authority shall be grounds for the state licensing authority to suspend or revoke a licensee's master file privileges.
- D. Licensees that originally qualified for a state master file, but who subsequently fall below the required five-license minimum due to business closures may maintain their master file and continue to renew the remaining licenses as master file licensees.
- E. No local licensing authority shall require applicants with an approved master file to file additional fingerprints or background investigation forms. Nothing in this section shall prohibit a local licensing authority from conducting its own investigation, or from verifying any of the information provided by the applicant, or from denying the application of the applicant pursuant to the provisions set forth in section 12-47-307, C.R.S.

Regulation 47-308. Repealed.

Regulation 47-309. Sports and Entertainment Venues.

- A. This regulation shall apply to licensees at facilities owned by a municipality, county, or special district, or at publicly or privately owned sports and entertainment venue with a minimum seating capacity of one thousand five hundred (1,500) seats.
- B. Licensees authorized to sell alcohol beverages in these venues may sell or provide alcohol beverages in sealed containers to adult occupants of areas within the licensed premises that have limited public access.
- C. Licensees are otherwise responsible for any violations of the Colorado Liquor Code within such limited public access areas and shall not prevent inspection of the premises by any law enforcement official.
- D. The licensee shall not allow any person to bring alcohol beverages onto the licensed premises that were not purchased from the licensee, or allow any person to leave the

licensed premises with a container of alcohol beverage that was purchased from the licensee.

Regulation 47-310. Application - General Provisions.

- A. All applications for state licenses for the manufacture or sale of alcohol beverages shall be made upon forms prescribed by the Department of Revenue, Liquor Enforcement Division. No application will be considered which is not complete in every material detail, nor which is not accompanied by a remittance in full for the whole amount of the annual state license fee, and eighty five percent of the local license fee. Each application for a new retail license shall contain a report of the local licensing authority of the town, city, county, or city and county, in which the applicant proposes to conduct its business, which report shall show the opinion of the local licensing authority concerning the reasonable requirements of the neighborhood and the desires of the adult inhabitants with respect to the issuance of the license applied for and the character of a new applicant.
- B. If the applicant for a license is a partnership, except as between a husband and wife, it shall submit with the application a certificate of co-partnership.
- C. Upon request of any licensing authority, each applicant for license shall provide suitable additional evidence of its citizenship, residence, and good character and reputation, and also of the reasonable requirements of the neighborhood and the desires of the adult inhabitants. Applicants and licensees shall also submit upon request of any licensing authority all required information concerning financial and management associations and interests of other persons in the business, and the deed, lease, contract, or other document governing the terms and conditions of occupancy of the premises licensed or proposed to be licensed.
- D. All information submitted to any licensing authority, by application for license or otherwise, shall be given fully, faithfully, truthfully and fairly.
- E. When a licensing authority is required to make a determination as to the character, record and reputation of existing licensees or applicants for new licenses, including transfers of ownership of existing licenses, the authority may consider the following factors, which may include but not be limited to the following:
 - 1. Subject to 24-5-101, C.R.S., the applicant or licensee has knowingly submitted false applications, made willful misrepresentations and/or knowingly committed fraudulent acts;
 - 2. The applicant or licensee has a criminal history of crimes of moral turpitude. By way of example, crimes of moral turpitude shall include but not be limited to, murder, burglary, robbery, arson, kidnapping, sexual assault, illegal drugs or narcotics convictions;
 - 3. The applicant or licensee has had previous alcohol beverage licenses denied or revoked as a result of violations of law, resulting in a finding of bad moral character by any licensing authority;
 - 4. The applicant or licensee has been found to be currently delinquent in the payment of any state or local taxes, and record of such tax delinquency has been filed in a court having jurisdiction, or has been made a public record by some other lawful means;

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5. The applicant or licensee has an established pattern of multiple statutory violations which resulted in the revocation or denial of any other professional license, leading to the finding of bad moral character by any licensing authority.
- F. Pursuant to 24-5-101, C.R.S., when making a determination as to the character, record or reputation of a licensee or applicant as required by title 12, articles 46, 47 and 48, the licensing authority shall also consider evidence of rehabilitation. Such evidence may include, but not be limited to, evidence of no criminal history record information, educational achievements, financial solvency, community standing, lack of additional arrests or convictions, or the lack of parole or probation violations since the date of last conviction.